

REMARKS

Claims 1, 2, 4-15, 23, 30-34 and 36-38 were pending and rejected. Claims 1, 6-8 and 31-34 are being amended. Reconsideration is respectfully requested.

Applicant is amending claims 1 and 33 to clarify the invention. Support for the amendments can be found, for instance, at page 3 lines 29-32 and at page 12 lines 13-22. No new matter is being added.

Applicant is amending claims 6 and 7 to correct a few minor grammatical errors. No new matter is being added. No substantive amendments are being made.

Applicant is amending claim 8 to properly refer to the treatment plan as including a prescription, not the diagnosis as including a prescription. Support can be found at page 3 line 33. No new matter is being added.

Applicant is amending claims 31, 32 and 34 to correct antecedent basis problems post amendment to claims 1 and 33. No new matter is being added.

In paragraph 4, the Examiner rejected claims 1, 2, 4-8, 14-15, 30-34, and 36-37 under 35 USC § 103(a) as unpatentable over Leet in view of McIlroy. Claim 1 as amended reads as follows:

1. *(Currently Amended) A computer system for assisting a medical practitioner, comprising:*

*medical practitioner input means for receiving new patient data regarding a patient, a diagnosis regarding the patient, and a treatment plan for the patient from a medical practitioner;*

*first means for accessing a standard diagnosis database to obtain standard diagnosis criteria corresponding to the diagnosis input by the medical practitioner, the standard diagnosis criteria identifying standard criteria for deriving the diagnosis input by the medical practitioner; for comparing the diagnosis and the treatment plan against the new patient data, known patient data and known medical information; and for generating an alarm in response to the comparison if the diagnosis or treatment plan seems inappropriate; and*

*second means for communicating the diagnosis criteria and any alarm to the medical practitioner, thereby enabling the physician to retrospectively consider the appropriateness of the diagnosis or treatment plan.*

In the office action, the Examiner indicated that Leet does not teach accessing a standard diagnosis database to obtain standard diagnosis criteria nor to communicate the standard diagnosis criteria to the medical practitioner. The Examiner then asserted that McIlroy in col. 2 line 43 – col. 3 line 9 and Figure 9b teaches accessing a standard diagnosis database to obtain standard diagnosis criteria and to communicate the diagnosis criteria to the medical practitioner. In the advisory action dated 3/21/07, the Examiner indicated that col. 2 lines 59-65 of McIlroy teaches diagnosis-based guidelines that can be used during various steps of the clinical decision process.

McIlroy states that “[e]ach guideline is intended to lead a system user through a sequence of interactive data-collection queries based on the specified health care condition observed in an individual patient.” Col. 5 lines 11-14. Further, McIlroy states that “[a] guideline is not a fixed formula or cookbook, although it must be a definite step by step algorithm that can be coded; rather, a guideline presents a disciplined framework or process to guide and assist the user, such as a health care provider, in identifying appropriate treatment.” Col. 7 lines 47-52. The specific process illustrated in Figure 9b of McIlroy uses diagnosis-based guidelines in “interactive question and answer methodology,” the answer being selectable from predetermined sets of answers (e.g., pass, fail, multiple-choice selection). Col. 2, lines 66-67; col. 12, lines 9-17. Accordingly, Applicant respectfully submits that standard diagnosis criteria does not encompass a “guideline” per McIlroy. Accordingly, McIlroy does not teach “first means for accessing a standard diagnosis database to obtain standard diagnosis criteria corresponding to the diagnosis input by the medical practitioner, the standard diagnosis criteria identifying standard criteria for deriving the diagnosis input by the medical practitioner” nor “second means for communicating the diagnosis criteria and any alarm to the medical practitioner, thereby enabling the physician to retrospectively consider the appropriateness of the diagnosis or treatment plan”, as recited in amended claim 1.

Accordingly, for at least these reasons, Applicant respectfully submits that independent claim 1 and claims 2, 4-8, 14-15, and 30-32 dependent therefrom are patentable over Leet in view of McIlroy and respectfully requests that the rejection be withdrawn.

In paragraph 4(M), the Examiner rejected independent claim 33 under 35 USC § 103(a) as unpatentable over Leet in view of McIlroy. Claim 33 as amended reads as follows:

33. *(Currently Amended) A computerized method for providing assistance to a medical practitioner, the method comprising:*
- receiving new patient data regarding a patient, a diagnosis regarding the patient, and a treatment plan for the patient from a medical practitioner by a personal communicator;*
  - using a standard diagnosis criteria database to determine standard diagnosis criteria, the standard diagnosis criteria identifying standard criteria for deriving the diagnosis input by medical practitioner;*
  - comparing the new patient data, the diagnosis and the treatment plan against the new patient data, known patient data and against a medical database;*
  - generating an alarm to the medical practitioner in response to the comparison if the diagnosis or the treatment plan seems inappropriate;*
  - communicating the standard diagnosis criteria and any alarm to the medical practitioner, thereby enabling the physician to retrospectively consider the appropriateness of the diagnosis or treatment plan; and*
  - enabling, through the personal communicator, the following actions:*
  - initiating implementation of the treatment plan; and*
  - allowing the medical practitioner to revise the diagnosis or treatment plan.*

Claim 33 includes limitations similar to claim 1. For example, claim 33 requires “using a standard diagnosis criteria database to determine standard diagnosis criteria, the standard diagnosis criteria identifying standard criteria for deriving the diagnosis input by medical practitioner”, “communicating the standard diagnosis criteria and any alarm to the medical practitioner, thereby enabling the physician to retrospectively consider the appropriateness of the diagnosis or treatment plan” and “allowing the medical practitioner to revise the diagnosis or treatment plan”. Accordingly, Applicant respectfully submits that claim 33 and claims 34, 36 and 37 dependent therefrom are patentable over Leet in view of McIlroy and respectfully requests that the rejection be withdrawn.

In paragraph 5, the Examiner rejected claims 9 and 10 under 35 USC § 103(a) as unpatentable over Leet in view of McIlroy and further in view of Portwood. Portwood teaches determining drug interactions. Like Leet and McIlroy, Portwood does not teach accessing or communicating standard diagnosis criteria as recited in claim 1. Accordingly, Applicant respectfully submits that claims 9 and 10, which depend from claim 1, are patentable over Leet in view of McIlroy and further in view of Portwood and respectfully requests that the rejection be withdrawn.

In paragraph 6, the Examiner rejected claims 11-13 and 38 under 35 USC § 103(a) as unpatentable over Leet in view of McIlroy and further in view of Evans. Evans teaches annotating x-rays and using x-rays as part of the diagnostic process. However, like Leet and McIlroy, Evans does not teach accessing or communicating standard diagnosis criteria as recited in claim 1. Accordingly, Applicant respectfully submits that claim 11, which depends from claim 1, is patentable over Leet in view of McIlroy and further in view of Evans and respectfully requests that the rejection be withdrawn.

In paragraph 7, the Examiner rejected claim 23 under 35 USC § 103(a) as unpatentable over Leet in view of McIlroy and further in view of Barry. Barry teaches a personal communicator with red alerts and yellow alerts. However, like Leet and McIlroy, Barry does not teach accessing or communicating standard diagnosis criteria as recited in claim 1. Accordingly, Applicant respectfully submits that claim 23, which depends from claim 1, is patentable over Leet in view of McIlroy and further in view of Barry and respectfully requests that the rejection be withdrawn.

For at least the foregoing reasons, Applicant respectfully submits that the 35 U.S.C. § 103(a) rejections of the pending claims have been overcome.

The Commissioner is hereby authorized to charge any required fees from Deposit Account No. 502811.

Should the Examiner have any questions concerning the foregoing, the Examiner is invited to telephone the undersigned attorney at 650.856.3911.

Respectfully submitted,

Date: 5/7/07



MARC A. SOCKOL

Reg. No. 40,823

THELEN REID BROWN RAYSMAN & STEINER LLP  
2225 East Bayshore Road, Suite 210  
Palo Alto, CA 94303  
Tel. 650.856.3911

CERTIFICATE OF MAILING

I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is being e-filed or deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to the Commissioner for Patents, Mail stop AF, P.O. Box 1450, Alexandria, VA 22313-1450, on

Date: 5/7/07

by 

SILICON VALLEY 4037v1